



United States Department of Agriculture
Rural Development

Rural Business-Cooperative Service • Rural Housing Service • Rural Utilities Service
Washington, DC 20250

RD AN No. 3718 (1924-A)
March 6, 2002

TO: Rural Development State Directors
Rural Development Managers
Community Development Managers
National Office Officials

ATTN: All Rural Housing and Business Programs Staff

FROM: James C. Alsop *(Signed by James C. Alsop)*
Acting Administrator
Rural Housing Service

John Rosso *(Signed by John Rosso)*
Administrator
Rural Business-Cooperative Service

SUBJECT: Residential Lead-Based Paint Hazard Reduction

PURPOSE AND INTENDED OUTCOME:

This Administrative Notice (AN) provides guidance to Rural Development staff on implementation of the Housing and Urban Development's (HUD) Final Rule on Lead-Based Paint (LBP) Hazards in Federally Owned Housing and Housing Receiving Federal Assistance (hereinafter, the "LBP regulation"). This guidance is intended to simplify and expedite our efforts to comply with the final rule on LBP, which took effect on September 15, 2000. This AN does not prohibit or restrict the financing of homes constructed prior to 1978.

COMPARISON WITH PREVIOUS AN:

This is a reissue of RD AN 3593 (1924-A), dated December 1, 2000, which expired December 31, 2001.

EXPIRATION DATE:
March 31, 2003

FILING INSTRUCTIONS:
Preceding RD Instruction 1924-A

BACKGROUND:

The Environmental Protection Agency (EPA) and HUD were tasked with promulgating rules focused on the control of LBP hazards. When fully implemented, these rules will greatly reduce the number of children exposed to harmful levels of lead associated with paint, dust, and bare soil found in and around older homes. Our primary focus in this AN is compliance with the LBP regulation promulgated by HUD.

This regulation was issued under sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, (Title X (“ten”) of the Housing and Community Development Act of 1992). Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, the basic law covering lead-based paint in Federally associated housing. The new regulation appears within Title 24 of the Code of Federal Regulations as part 35 (24 C.F.R. part 35).

This LBP regulation sets out specific requirements for Federally owned residential property and housing receiving Federal assistance. The LBP regulation stresses identification of hazards, notification to occupants of the existence of these hazards, and control of those hazards.

AGENCY ADOPTION OF TITLE X

The proposed rule, *Environmental Policies and Procedures* (7 CFR part 1940, subpart S) eventually to be a replacement for the current Agency environmental rule found at 7 C.F.R. part 1940, subpart G, was published in the Federal Register on September 14, 2000. The new rule includes the applicable LBP requirements contained in 24 CFR part 35. When final, it will move the Agency lead-based paint compliance requirements for the Rural Housing Service and the Rural Business-Cooperative Service (hereinafter referred to as Rural Development) from RD Instruction 1924-A, Exhibit H, to RD Instruction 1940-S.

The following table identifies the subparts of the new LBP regulation adopted by Rural Development and the various programs that are affected. These subparts replace what is presently in RD Instruction 1924-A, Exhibit H, and take precedence over what is presently in all Rural Development instructions and handbooks concerning lead-based paint. The requirements of these subparts are applicable to all housing constructed prior to 1978 that is financially assisted by the Agency or being sold by the Agency. The requirements in this AN are to be used until RD Instruction 1940-S, Environmental Policies and Procedures, has been published as a final rule.

LBP COMPLIANCE ADOPTED SUBPARTS MATRIX		
Subpart	Title of Subpart	Programs Impacted
A ¹	Disclosure of Known LBP Hazards Upon Sale or Lease of Residential Property	502, 514, 515, 516, 538, CF, B&I
B ¹	General LBP Requirements and Definitions	502, 504, 514, 515, 516, 521, 533, 538, CF, B&I
C ²	Disposition of Residential Property Owned by a Federal Agency Other Than HUD	502, 514, 515, 516, CF, B&I
D ²	Project-based Assistance Provided by a Federal Agency Other Than HUD	514, 515, 516, 521, 538, CF, B&I
J ²	Rehabilitation (applicable sections)	502, 504, 533, 514, 515, 516, CF, B&I
R ¹	Methods and Standards for LBP Hazard Evaluation and Hazard Reduction Activities	502, 504, 514, 515, 516, 521, 533, 538, CF, B&I

Footnotes

- 1. Applies to all residential housing in Rural Development programs if the house was built prior to 1978.*
- 2. Provides specific requirements depending on whether housing is being disposed of or assistance provided by the Agency, type and amount of financial assistance, age of structure, and whether dwelling is rental or owner-occupied.*

IMPLEMENTATION

Implementation of the requirements of the new LBP regulation occurred on September 15, 2000, with the Rural Development goal being full compliance with applicable subparts of the regulation. The requirement for lead paint disclosure under the old LBP regulation remains unchanged. With implementation of the new HUD issued LBP rule at 24 CFR part 35, disclosure requirements moved to subpart A. Historically, ensuring lead paint disclosure has been the Agency's main compliance requirement and will continue to be the situation for the majority of Agency program activities. In addition to lead paint disclosure, Agency activities that include rehabilitation or the sale of real estate owned (REO) property have additional compliance requirements under the new LBP regulation. A revised "Lead-Based Paint Compliance Key" (Attachment 1), dated December 2001, is provided as a step-by-step guide for identifying actions the Agency must take to achieve full compliance with the new requirements of the LBP regulations in all affected programs. The key is intended for use at the start of the loan or grant making process and prior to foreclosure and will be used by all programs except Guaranteed Single Family Housing prior to commitment of Agency resources.

Guaranteed Single Family Housing will use this key during lender compliance review monitoring.

A computer-based version of the LBP Compliance Key has been developed and is available on the Rural Development Intranet site (<http://rdintra.usda.gov>). This tool allows the questions from the LBP Compliance Key to be answered on the computer and the responses used to generate a project specific report that outlines the compliance requirements for each individual single family residence or multifamily complex. The tool also provides access to the regulation and definitions. Computer-based training applications are also provided to give a general overview of the new regulation, its impacts, and how to deal with them.

A copy of Attachment 1, "Lead-Based Paint Compliance Key," or the computer-based version of the LBP Compliance Key should be included in each project file.

State Directors have appointed staff members to a state *LBP Support Team*. The *LBP Support Team* is composed of both technical representatives and program representatives. These individuals serve as the State-level contacts and should be familiar with the specific requirements of the adopted subparts of Title X as they relate to each program. The latest news on LBP compliance will be e-mailed to these individuals prior to general dissemination. Each state team serves as the point-of-contact between the State and National Office. Attachment 2, *State LBP Support Team*, lists the names, phone numbers, and e-mail addresses for all members.

HUD TRANSITION ASSISTANCE POLICY

HUD developed a transition assistance policy for jurisdictions with inadequate capacity. It has been more than 2 years since the LBP regulation was first published on September 11, 1999. During this period, HUD conducted nationwide training to build capacity in lead-safe work practices for workers performing rehabilitation or maintenance in Federally assisted housing as well as training for risk assessors, abatement contractors, and workers. Because of this training, no further extensions are anticipated beyond January 10, 2002.

If Rural Development is providing financial assistance in a jurisdiction that was previously granted transition assistance, Rural Development must now comply with the LBP regulations adopted by the Agency and listed under **AGENCY ADOPTION OF TITLE X** above.

EXEMPT HOUSING

Subparts B through R of 24 CFR part 35 do not apply to the following:

- 1) Non-residential property (see “*Special Considerations for Child Occupied Facilities*” below).
- 2) Housing built after January 1, 1978.
- 3) Multi-family housing exclusively for occupancy by the elderly or persons with disabilities. This exemption does not apply if a child less than age 6 resides or is expected to reside in the dwelling unit. This exemption does not apply to the Single Family Housing Section 504 program.
- 4) Zero-bedroom dwellings (e.g., efficiency apartments, single-room occupancy housing, dormitories, military barracks, etc.).
- 5) Property found free of LBP by a certified LBP inspector.
- 6) Property where all LBP has been removed.
- 7) Unoccupied housing that will remain vacant until it is demolished.
- 8) Any rehabilitation or improvement of a house that does not disturb a painted surface.

POSSIBLE FUNDING SOURCES FOR COMPLIANCE ACTIVITIES

Properties owned by Rural Development are eligible for Program Loan Cost Expense Funds and Rural Development environmental funds to reduce LBP hazards. The environmental funds are intended to supplement the Program Loan Cost Expense Funds and must be requested from the National Office on a case-by-case basis. The funding of LBP hazard reduction activities is also an eligible loan cost for borrowers. Program Loan Cost Funds cannot be used to fund LBP hazard reduction activities for borrowers or loan applicants. Loan funds may be provided for LBP hazard reduction at purchase or as a subsequent loan. In addition, grants may be available to our borrowers from other Federal, state, local, and private sources. Each state is strongly encouraged to identify sources of funding within its service areas and provide this information to borrowers.

SPECIAL CONSIDERATION FOR CHILD-OCCUPIED FACILITIES

Rural Development programs (e.g., Business, Community Facilities) that provide Federal assistance for child-occupied facilities must comply with the EPA LBP requirements found in 40 CFR part 745, subpart L. A child-occupied facility is defined as a building constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least 2 different days within any week (Sunday through Saturday period), provided that each day’s visit lasts 3 hours and the combined annual visits last at least 60 hours. Child-

occupied facilities may include, but are not limited to, day-care centers, preschools, and kindergarten classrooms.

STATE AND LOCAL LAWS

This AN will not relieve the seller, lessor, owner, or agent from any responsibility for compliance with state or local laws, ordinances, codes, or regulations governing LBP or LBP hazards. Rural Development assumes no responsibility for ensuring compliance with such state or local requirements.

LEAD-BASED PAINT INFORMATION SOURCES

The EPA, HUD, and Consumer Product Safety Commission have jointly produced a LBP awareness pamphlet entitled *Protect Your Family From Lead in Your Home*. This pamphlet is a good source of information on LBP hazards found in the home and is available in English and Spanish. This pamphlet can be obtained from the Rural Development Property and Supply Management Division in St. Louis. To request copies of this pamphlet, complete Form RD 2024-4, *Request for Forms/Supplies/Pamphlets Listed in Rural Development Supply Catalogue* (Stock #494 for English, or #494-S for Spanish), and fax to 1-800-336-3604. This pamphlet, along with sample disclosure forms, is also available on the HUD Internet site (www.hud.gov/lea/leadhelp.html). In addition, the new LBP regulation is available from the HUD Internet site (www.hud.gov/lea/leadwnlo.html).

Regional EPA offices should be contacted to identify companies that are certified to perform LBP inspections, risk assessments, and abatement in each state. In addition, the Program Support Staff can aid with the identification of contractors, scopes-of-work, government cost estimates, and other related support. Reference information will be posted on the Rural Development Intranet site in the Rural Housing Service document library.

Staff members involved with LBP compliance activities are encouraged to complete HUD's "Visual Assessment Training Course," which is an Internet-based (www.hud.gov/lea/lbptraining.html) awareness course.

POINTS OF CONTACT

Please direct all questions pertaining to this AN and the Rural Development adopted sections of the LBP regulation to members of your *State LBP Support Team*. If further clarification is needed, please direct questions to the National Office Program Support Staff: Sam Hodges, Architect, at (202) 720-9653, or Brian LaFlamme, Environmental Specialist, at (202) 720-9656.

2 Attachments

1. Lead-Based Paint Compliance Key
2. Lead-Based Paint State Support Teams

LEAD-BASED PAINT COMPLIANCE KEY (December 2001)

ATTACHMENT 1

Use the following key for all Rural Development actions that involve residential property or child-occupied facility (hereinafter collectively, "property"). This key will allow the user to determine applicability of lead-based paint (LBP) regulations and what actions must be taken to achieve compliance. This key is intended as a guide to compliance, and must be used in conjunction with the new LBP regulation. Maintain a copy of the results from the key in the project docket. Pertinent information such as the date the key was completed, project address, borrower, processing official, etc., should be included in the documentation.

INSTRUCTIONS: Start by answering the eight compliance screening questions in Table 1 below. If any answer is 'Yes' then Subparts B through R of 24 CFR Part 35 do not apply. If all eight questions were answered with a 'NO,' 24 CFR Part 35 does apply. If 24 CFR Part 35 does apply, then proceed to Table 2 and answer each questions with a 'Yes' or 'No,' and take the corresponding action(s). Follow the key until all compliance requirements are identified, or it is determined that the LBP regulation is not applicable. Reference the 24 CFR Part 35 Regulation Citation and Funding Sources for specific details on what each action entails and possible funding sources.

TABLE I. EXEMPTIONS

	Yes	No	
1			Was property built since January 1, 1978, when lead paint was banned for residential use?
2			Is housing exclusively for the elderly or people with disabilities? This exemption does not apply if a child less than age 6 resides or is expected to reside in the dwelling unit. (<i>Housing exclusively for the elderly applies to 515 elderly projects, but does not apply to the 504 program</i>)
3			Is property a zero-bedroom dwelling, including efficiency apartments, single-room occupancy housing or dormitories?
4			Has the property been found to be free of lead-based paint by a certified lead-based paint inspector?
5			For this property, has all lead-based paint been identified, removed, and clearance achieved?
6			Will the unoccupied property remain vacant until it is demolished?
7			Is this non-residential property? (<i>does not include child-occupied facilities</i>)
8			Rehabilitation that does not disturb a painted surface?

LEAD-BASED PAINT COMPLIANCE KEY

(December 2001)

TABLE II. COMPLIANCE REQUIREMENTS

	Question	Response	Action	24 CFR Part 35 Regulatory Citations	Funding Sources ⁽¹⁾
1.	Is residential property or a child-occupied facility involved?	YES	Go to 2 (below)		
		NO	STOP , Subpart B through R of 24 CFR Part 35 does not apply		
2.	Was property constructed prior to 1/1/78?	YES	Go to 3 (below)		
		NO	STOP , Subpart B through R of 24 CFR Part 35 does not apply		
3.	Is property being bought, sold, or leased?	YES	Go to 3a		
		NO	Go to 4 (page A-3)		
3a.	Is property real estate owned (REO) by Agency?	YES	Go to 3b		
		NO	Agency Must:		
			a. Ensure disclosure documents are in file	Subpart B, Section 35.175	
			b. Go to 4 (page A-3)		
		NO	Seller or Lessor Must:		
			a. Disclose known information on LBP to buyer or renter(s)	Subpart A, Section 35.88(a)(2-4)	
			b. Provide LBP Pamphlet	Subpart A, Section 35.88(a)(1)	
			c. Go to 4 (page A-3)		

1. Possible Source of Funding

a. Program Loan Cost Expense Funds **b.** Agency Program Funds **c.** Other Federal, State, and Local Grants **d.** Private Funds **e.** Agency Environmental Funds

2. Or presume paint has lead content

LEAD-BASED PAINT COMPLIANCE KEY

(December 2001)

Question	Response	Action	24 CFR Part 35 Regulatory Citations	Funding Sources ⁽¹⁾
3b. Was REO property constructed between 1/1/60 and 12/31/77?	YES	Agency Must: a. Conduct LBP Inspection ⁽²⁾ b. Conduct Risk Assessment c. Provide Notice to prospective purchasers of Results d. Go to 4 (below)	Subpart C, Section 35.215 Subpart C, Section 35.215 Subpart C, Section 35.215 Subpart A, Section 35.88(a)(4)	a, b, e a, b, e a, b, e a, b, e
	NO	Agency Must: a. Conduct LBP Inspection ⁽²⁾ b. Conduct Risk Assessment c. Abatement of LBP Hazard d. Conduct a Clearance Examination e. Provide Notice to Occupants of Results f. Go to 4 (below)	Subpart C, Section 35.210(a) Subpart C, Section 35.210(a) Subpart C, Section 35.210(b) Subpart C, Section 35.210(b) Subpart A, Section 35.88(a)(4)	a, b, e a, b, e a, b, e a, b, e a, b, e
4. Is funding for rehabilitation being provided? (see Note)	Yes	Go to 4a (below)		
	No	Go to 5 (page A-5)		
4a. Is funding for rehabilitation less than or equal to \$5,000 (per dwelling unit, per year)?	YES	Agency Must Ensure and Document that Owner or Grantee: a. Provides LBP Pamphlet to Occupants b. Tests Paint on Surface(s) to be Disturbed ⁽²⁾ c. Uses Safe Work Practices (see Table III) d. Repairs Disturbed Paint e. Performs Clearance Test f. Provides Notice to Occupants of Result g. Go to 5 (page A-5)	Subpart B, Section 35.175 Subpart J, Section 35.910(b) Subpart J, Section 35.930(b)(1) Subpart J, Section 35.1350 Subpart J, Section 35.930 (b)(2) Subpart J, Section 35.930(b)(3) Subpart B, Section 35.125(a)/(b)	a, b b, c, d b, c, d b, c, d b, c, d b, c, d b, c, d
	NO	Go to 4b (page A-4)		

1. Possible Source of Funding

a. Program Loan Cost Expense Funds b. Agency Program Funds c. Other Federal, State, and Local Grants d. Private Funds e. Agency Environmental Funds

2. Or presume paint has lead content

LEAD-BASED PAINT COMPLIANCE KEY

(December 2001)

Question	Response	Action	24 CFR Part 35 Regulatory Citations	Funding Sources ⁽¹⁾
4b. Is rehabilitation assistance greater than \$5,000 and less than or equal to \$25,000 (per dwelling unit, per year)?	YES	Agency Must Ensure and Document that Owner or Grantee: a. Provides LBP Pamphlet to Occupants b. Tests Paint on Surface(s) to be Disturbed ⁽²⁾ c. Conducts Risk Assessment d. Establishes Interim Control (see Table III) e. Performs a Clearance Examination f. Provides Notice to Occupants of Results g. Go to 5 (page A-5)	Subpart B, Section 35.175 Subpart J, Section 35.910(b) Subpart J, Section 35.930(c)(1) Subpart J, Section 35.930(c)(2) Subpart J, Section 35.930(c)(3) Subpart R, Section 35.1330(a)(3) Subpart B, Section 35.125(a)/(b)	a, b b, c, d b, c, d b, c, d b, c, d b, c, d b, c, d
	NO	Agency Must Ensure and Document that Owner or Grantee: a. Provides LBP Pamphlet to Occupants b. Tests Paint on Surface(s) to be Disturbed ⁽²⁾ c. Conducts Risk Assessment d. Abatement of All LBP Hazards Identified (see Table III) e. Performs a Clearance Examination f. Provides Notice to Occupants of Results g. Ongoing LBP Maintenance h. Go to 5 (page A-5)	Subpart B, Section 35.175 Subpart J, Section 35.910(b) Subpart J, Section 35.930(d)(1) Subpart J, Section 35.930(d)(2) Subpart J, Section 35.930(d)(3) Subpart R, Section 35.1335(f) Subpart B, Section 35.125(a) Subpart R, Section 35.1355(a)/(b)	a, b b, c, d b, c, d b, c, d b, c, d b, c, d b, c, d b, c, d

1. Possible Source of Funding

a. Program Loan Cost Expense Funds

b. Agency Program Funds

c. Other Federal, State, and Local Grants

d. Private Funds

e. Agency Environmental Funds

2. Or presume paint has lead content

LEAD-BASED PAINT COMPLIANCE KEY

(December 2001)

Question	Response	Action	24 CFR Part 35 Regulatory Citations	Funding Sources ⁽¹⁾
5. Is project-based rental assistance and/or interest credit equal to or greater than \$5,000 annually, per project?	YES	Agency Must Ensure and Document that Owner or Landlord: <ul style="list-style-type: none"> a. Provides LBP Pamphlet to Occupants b. Conducts Risk Assessment c. Establishes Interim Controls d. Conducts a Clearance Examination e. Provides Notice of Results to Occupants f. Takes Immediate Response to a Child under 6 years of age with an Environmental Intervention Blood Lead Level <ul style="list-style-type: none"> - <i>Risk Assessment</i> - <i>Interim Controls</i> - <i>Clearance</i> 	Subpart B, Section 35.175 Subpart D, Section 35.310(b) Subpart D, Section 35.315 Subpart D, Section 35.320 Subpart R, Section 35.1330 Subpart R, Section 35.1330(a)(3) Subpart B, Section 35.310(a) Subpart D, Section 35.325	a, b b, c, d b, c, d b, c, d b, c, d b, c, d b, c, d b, c, d
	NO	STOP		

TABLE III. SAFE WORK PRACTICE AND CLEARANCE SCREENING

Answer the following three questions to determine if the Safe Work Practices apply to the rehabilitation. If the answer to all three questions is 'Yes,' 'Safe Work Practices' and 'Clearance' are not applicable to the proposed rehabilitation. Document results in case file.

	Yes	No	
1			Exterior Surfaces - Will maintenance or hazard reduction activity disturb painted surface that total less than 20 square feet (2 square meters)?
2			Interior Surfaces - Will Maintenance or hazard reduction activity disturb painted surface that total less than 2 square feet (0.2 square meters)?
3			Component (e.g., door jam, window sill) - Will maintenance on a painted surface disturb 10 percent or less of the total surface area on an exterior or interior type of component?

1. Possible Source of Funding

a. Program Loan Cost Expense Funds b. Agency Program Funds c. Other Federal, State, and Local Grants d. Private Funds e. Agency Environmental Funds

2. Or presume paint has lead content

RURAL DEVELOPMENT
STATE LEAD-BASED PAINT SUPPORT TEAMS

As of 02/25/02

Attachment 2

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RURAL DEVELOPMENT
STATE LEAD-BASED PAINT SUPPORT TEAMS

As of 02/25/02

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RURAL DEVELOPMENT
STATE LEAD-BASED PAINT SUPPORT TEAMS

As of 02/25/02

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STATE LEAD-BASED PAINT SUPPORT TEAMS

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